

MARRIAGE (SAME SEX COUPLES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 2 – Other provisions relating to marriage and civil partnership

Section 12 – Change of gender of married persons or civil partners

63. **Section 12** brings into effect Schedule 5 (Change of gender of married persons or civil partners). Part 1 of Schedule 5 amends the Gender Recognition Act 2004 to enable couples in “protected marriages” to remain married following one or both parties obtaining gender recognition, if both parties to the marriage wish the marriage to continue. Part 2 of Schedule 5 amends the Gender Recognition Act 2004 to enable applicants who were or who are currently in protected marriages and who started living in their acquired gender a long time ago to apply for gender recognition under a modified medical evidence procedure.

Section 13 – Marriage overseas

64. **Section 13** brings into effect Schedule 6 (Marriage overseas) and repeals the Foreign Marriage Act 1892 for England and Wales, and Scotland. The Orders in Council that may be made under Schedule 6 will replace the provision currently made by the Foreign Marriage Act 1892 for marriages for both same sex and opposite sex couples.

Section 14 – Marriages according to the usages of belief organisations

65. **Section 14(1)** requires the Secretary of State to arrange for a review of whether an order should be made permitting belief organisations to solemnize marriages and to consider what provision should be made in the order. Subsection (7) defines a belief organisation as an organisation whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics.
66. Under subsections (2) and (3), the arrangements for the review must provide for a full public consultation and the Secretary of State must arrange for a report on the outcome of the review to be produced and published by 1 January 2015. Subsection (4) gives the Secretary of State the power to make provision by order permitting marriages according to the usages of belief organisations. The exercise of this power is subject to the affirmative parliamentary procedure. Under subsection (5), such an order may amend any England and Wales legislation (both primary and secondary legislation), and may make provision for the charging of fees. In accordance with subsection (6), such an order must also provide that there can be no religious element in a marriage ceremony under the order.

Section 15 – Review of civil partnership

67. **Section 15** requires the Secretary of State to arrange for a review to be carried out on the operation and future of the Civil Partnership Act in England and Wales. The review must begin as soon as practicable and must include a full public consultation. A report on the outcome of the review must be published.

68. Subsection (2) provides that the review can look at other matters relating to civil partnerships.

Section 16 – Survivor benefits under occupational pension schemes

69. **Section 16** requires the Secretary of State to arrange for a review to be carried out on relevant differences in survivor benefits in occupational pension schemes. The review must consider differences between: same sex survivor benefits and opposite sex survivor benefits provided to widows; same sex survivor benefits and opposite sex survivor benefits provided to widowers; opposite sex survivor benefits provided to widows; and opposite sex survivor benefits provided to widowers. The review must consider what the costs and other effects would be if the relevant differences in survivor benefits were eliminated. In particular the review must consider the extent to which occupational pension schemes provide survivor benefits relying on the exception in paragraph 18 of Schedule 9 to the Equality Act 2010 (which provides that it is not unlawful sexual orientation discrimination for an occupational pension scheme not to provide benefits to the surviving partner of a civil partnership, in respect of pension rights accrued by the deceased partner prior to 5 December 2005); and the extent to which same sex survivor benefits and opposite sex survivor benefits are calculated by reference to different periods of pensionable service. The review must include consultation with interested parties whom the Secretary of State considers appropriate, and a report of the review must be published before 1 July 2014. If the Secretary of State, having considered the outcome of the review, thinks that the law should be changed in order to eliminate or reduce differences in survivor benefits, subsection (6) sets out that provision may be made in an order subject to approval by Parliament by the affirmative parliamentary procedure.